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6 UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF WASHINGTON

8 UNITED STATES OF AMERICA,

9 Plaintiff,

10 NO. CR-09-2074-LRS-4

11 v.

12 NICOLAS ROHRBACH,

13 Defendant.

14 **ORDER DECLARING MISTRIAL AND**
15 **SETTING NEW TRIAL DATE AND**
16 **PRETRIAL CONFERENCE DATE**

17 This matter came on for jury trial on April 26, 2010, and concluded
18 on April 29, 2010, when the Court declared a mistrial on **Count 13** in the
19 **Superceding Indictment** (Ct. Rec. 313). The government was represented
20 by Assistant United States Attorney Thomas Hanlon, Esq. The Defendant,
21 Nicolas Rohrbach, was present and represented by Ric Smith, Esq. This
22 Order is entered to memorialize the oral rulings of the Court.

23 On April 29, 2010, the jury in the above-captioned case sent a note
24 to the Court (Ct. Rec. 309), indicating that they were unable to reach
25 a unanimous verdict on Count 13 but they had reached a verdict on Count
26 12. Following receipt of the note, the Court examined the jury, in the
presence of counsel, and the defendant. The Court then heard from
counsel for both parties outside of the jury's presence as to whether the

1 Court should issue any further supplemental instruction. Counsel
2 requested the Court to read the Ninth Circuit Criminal Model Jury
3 Instruction 7.7 (2003) for a deadlocked jury, which the Court did with
4 modification.

5 Later on April 29, 2010, the jury sent another note (Ct. Rec. 311)
6 indicating they were unable to reach a unanimous verdict on Count 13
7 after further deliberation. Following receipt of the note, the Court
8 examined the jury, in the presence of counsel, and the defendant. The
9 Court concluded that the jury was hopelessly deadlocked and that further
10 deliberation would not assist in reaching a unanimous verdict. Counsel
11 for the parties did not object. The government requested the Court
12 declare a mistrial and Defendant objected to the same.
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14 Accordingly, the Court declared a mistrial on Count 13, and
15 discharged the jury on April 29, 2010.

16 **IT IS HEREBY ORDERED:**

17 1. The Court declares a **MISTRIAL** on **Count 13 of the Superceding**
18 **Indictment** (Ct. Rec. 313).

19 2. Defendant's new speedy trial interval on Count 13 shall begin
20 with the entry of this Order memorializing the oral ruling of the Court.
21 See 18 U.S.C. § 3161(e) (stating trial to "commence within seventy days
22 from the date the action occasioning the retrial becomes final"); *United*
23 *States v. Crooks*, 804 F.2d 1441 (9th Cir. 1986) (holding under 18 U.S.C.
24 § 3161(e) that "district court's order, not the dismissal of the jury,
25 constituted the action occasioning the new trial").
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3. Defendant's **NEW TRIAL** is set for **June 14, 2010** at **9:00 a.m.** in **Yakima, Washington**. Counsel shall meet with the Court in Chambers at **8:30 a.m.** on the day of trial. Any motions will be addressed at a pretrial conference in open court at **8:30 a.m.**

4. All pretrial motions, including motions *in limine*, must be filed and served **NO LATER THAN May 20, 2010**. Responses and replies to any motions shall be filed and served in accordance with LR 7.1(c) and (d).

5. The **Pretrial Conference** is SET for **May 27, 2010 at 2:00 p.m.** in **Yakima**, Washington. At this hearing, the Court will hear all pretrial motions, including motions *in limine*.

IT IS SO ORDERED. The District Court Executive is directed to enter this order and to provide copies to counsel.

DATED this 3rd day of May, 2010.

s/Lonny R. Suko

LONNY R. SUKO
Chief United States District Judge